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October 28, 2016

VIA ECF
Honorable Judge Anne Shields
United States Courthouse
Eastern District of New York
100 Federal Plaza
Central Islip, New York 11722

Re: ***Chen v. Kenta***
Case No. 15-cv-06206

Dear Judge Shields:

Please be advised that our office represents the Defendants in this matter. Further to our discussions in Court last week and pursuant to the Court's recent order, please allow this to serve as our Rule 37 letter seeking sanctions.

I must state that I make this request reluctantly. In my career, I seldom have moved for sanctions against another party or their attorney, and in the rare case that I have done so, it is generally for egregious conduct. I generally prefer to resolve issues between the parties in good faith without judicial intervention. As such, I take no joy or satisfaction in filing this request.

Nevertheless, I believe I must make the request to protect my client. As stated in Court, Kenta is no longer in business, and the prior owners all own/manage other businesses. Mr. Peskin attended the conference in hopes of good faith negotiations, but obviously lost an entire day operating his own business to appear. Plaintiff provided us a prior demand (only after we requested same) of $100,000. The demand was calculated based on purported damages for unpaid wages and compensatory damages for the alleged harassment/discrimination. The demand included triple damages under the FLSA and stacked damages under Title VII and the NY Executive Law. Though neither was reasonable, we still believed that it was prudent to attend the conference in good faith.

When Plaintiff's counsel advised us five minutes before the conference that the settlement demand was now $200,000, with no justification for same, we were obviously dismayed. Ultimately we did not believe it was prudent to proceed with the conference. Thus, my client wasted an entire day, as did our office.

It is difficult to measure Mr. Peskin's lost time. As such, although it likely is higher, we believe a sanction of $1,000, constituting my billable time for the day, is a reasonable sanction for Plaintiff's action. Again, had Plaintiff provided some reasonable explanation for this massive increase in his demand, this request may not have been made.

We look forward to the Court's decision regarding same.

Very truly yours,

Jeffrey S. Ettenger